### Before the Commission 1 3 1997 Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	Foderal Communications Commission Office of Secretary
Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service	) ) )	MM Docket No. 87-268

To: The Commission

### PETITION FOR PARTIAL RECONSIDERATION OF HARTE-HANKS TELEVISION, INC.

Harte-Hanks Television, Inc. ("Harte-Hanks"), licensee of KENS-TV, Channel 5, San Antonio, Texas, by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, hereby seeks partial reconsideration of the Sixth Report and Order in MM Docket No. 87-268. Harte-Hanks requests that the Commission correct the coordinates for the DTV channel assigned to Station KENS-TV, San Antonio, Texas, and make other changes in the policies and rules adopted in the Sixth Report and Order.

#### I. THE NEW DTV TABLE IS APPARENTLY BASED ON INCORRECT COORDINATES FOR STATION KENS-TV

Appendix B of the Sixth Report and Order provides the reference coordinates for initial DTV channels based on the location of existing NTSC transmitters. The reference coordinates provided in that appendix for Channel 55, San Antonio, Texas, and upon which the new DTV Table of Allotments (the "DTV Table") apparently was based, are incorrect. Specifically, the appendix lists the North Latitude coordinates

Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268, FCC 97-115, 62 Fed. Reg. 26684, Sixth Report and Order (released April 21, 1997) ("Sixth Report and Order").

for Station KENS-TV as "29-16-07."<sup>2</sup> The correct coordinates for the station are "29-16-10," as indicated in its current license on file (see Attachment).

It is unclear whether this error, when corrected, would require adjustments to the authorized transmission power and antenna height associated with KENS-TV's DTV channel assignment in the new DTV Table. It is equally unclear whether KENS-TV would require the assignment of an alternate DTV channel once the correct coordinates are used in the calculations. Moveover, if such errors have occurred elsewhere in the DTV Table, it is conceivable that a vast number of changes with ripple effects would occur when corrected data are used. The Commission should reconsider the new DTV Table of Allotments in light of all such errors and recalculate the channel assignments and the authorized power and height maximums in the new DTV Table.

In any event, Harte-Hanks requests that the Commission reconsider the calculations underlying the new DTV Table of Allotments, taking into account the correct coordinates for Station KENS-TV, and to make such revisions to the DTV Table as may be required.

# II. SPECIAL PROTECTIONS SHOULD BE ADOPTED FOR DISPLACED STATIONS IF THE COMMISSION DOES NOT ADOPT A POST-TRANSITION DTV CORE SPECTRUM WHICH INCLUDES THE LOWER VHF CHANNELS

In the <u>Sixth Report and Order</u>, the Commission adopted a "core spectrum" approach under which initial DTV channel assignments would be concentrated in the spectrum from Channels 2

<sup>&</sup>lt;sup>2</sup> <u>Id.</u> at Appendix B, B-60.

to 51, with other channels outside this region being assigned "where necessary." If the lower VHF channels (2-6) "prove acceptable for DTV use," the Commission indicated that it would consider "retaining" these channels for DTV and adjusting the core spectrum to encompass Channels 2-46 at the end of the transition period (currently set for the year 2006). Otherwise, the Commission would establish Channels 7-51 as the posttransition core spectrum.

In its current form, the "core spectrum" approach creates a "safety zone" in channels 7 through 46, but a zone of uncertainty in channels 2 through 6, and all channels above channel 46. Stations assigned initial DTV channels in the safety zone will enjoy significant benefits in economic efficiency and certainty, as these channels will not be displaced by the Commission's decision to "reclaim" television spectrum at the end of the transition. By contrast, those stations assigned DTV channels outside the safety zone -- KENS-TV was assigned DTV Channel 55 -- will not only confront significant uncertainty as to its post-transition DTV channel, but also suffer considerable economic hardship should they be made to bear the twin expense of transitioning to DTV and relocating to a second DTV channel at the end of the transition period.

 $<sup>^{3}</sup>$  Id. ¶ 76.

<sup>&</sup>lt;sup>4</sup> <u>Id.</u> ¶ 83.

<sup>&</sup>lt;sup>3</sup> Id.

If the Commission was to include the lower VHF channels in the post-transition core spectrum, KENS-TV would have the option of reverting to its former NTSC channel. However, if the lower VHF channels are not included in the post-transition core, KENS-TV would be left at risk of not finding a suitable replacement channel with comparable coverage. Under these circumstances, the Commission should provide assurances that a suitable replacement channel will be assigned. The Commission should also require that all displaced stations be fully compensated for the relocation costs associated with moving to a second DTV channel.

A. Adoption of a Post-Transition Core Including the Lower VHF Channels Would Allow More Stations With Initial DTV Channel Assignments Outside the Core to Revert to Their Existing NTSC Channels at the End of the Transition

To minimize the displacement of broadcasters assigned initial DTV channels outside the core spectrum, the Commission decided to allow those broadcasters, wherever feasible, to switch their DTV service to their existing NTSC channels at the end of the transition if they desire to do so and if the station's existing channel falls within the post-transition DTV core spectrum.

Analysis of the Commission's DTV Table of Allotments indicates that more displaced broadcasters will be able to switch their DTV services to existing NTSC stations if the Commission selects Channels 2-46 as the post-transition core spectrum, than

<sup>6 &</sup>lt;u>Id.</u> ¶ 84.

if it selects Channels 7-51. Specifically, if the core spectrum encompasses Channels 2-46, 71 displaced stations would be able to switch their DTV services to existing NTSC systems operating on the lower VHF channels (Channels 2-6). In contrast, if the core spectrum includes Channels 7-51, only 12 displaced stations would be able to switch to their existing NTSC channels operating on Channels 47 through 51.

By including the lower VHF channels in the post-transition core spectrum, a significantly larger number of displaced broadcasters will be able to take advantage of the DTV-NTSC channel swap option provided under the Commission's rules, thereby mitigating the amount of disruption to those licensees assigned DTV channels at the fringes of the safety zone (i.e., Channels 2-6, and Channels 47-51). Accordingly, Harte-Hanks urges the Commission to adopt a post-transition core spectrum that encompasses Channels 2-46.

B. The Commission's Rules Should Ensure that a Displaced Station's Replacement DTV Channel Assignment Affords Comparable Coverage

The Commission adopted a policy of service replication, and the operating parameters set forth in the DTV Table are said to provide for 99.4% replication of the current service area. After the transition period ends in 2006, KENS-TV

<sup>&</sup>lt;sup>7</sup> <u>Id.</u> ¶ 20.

<sup>&</sup>lt;sup>8</sup> The operating parameters for Channel 55 contained in Appendix B of the <u>Sixth Report and Order</u> provide for a maximum effective radiated power ("ERP") of 1000 megawatts (MW) and an antenna height above average terrain ("HAAT") of 424 meters. <u>Id.</u>

will have to relocate its DTV facilities to a channel located within the post-transition core (either Channels 2-46 or Channels 7-51). However, in requiring Station KENS-TV to relocate, there are no assurances in the new rules that KENS-TV's replacement DTV channel assignment will afford comparable DTV coverage. Indeed, the adopted rules establish <u>limits</u> on transmission power and antenna heights for all DTV channel allotments created subsequent to the initial DTV Table. Although the Commission may grant requests of licensees to increase transmission power and/or antenna height beyond the limits established in the rules, it will only do so where such increases do not result in additional interference. Thus a displaced station's coverage on its initial DTV channel is not assured once it relocates to a replacement channel within the post-transition core spectrum.

An implementation plan for DTV which fails to afford comparable service to displaced stations would not only be contrary to the Commission's policy of service replication, but would also be unfair and economically burdensome. Such an approach would be arbitrary and capricious, constituting an abuse of the Commission's discretion. Harte-Hanks urges the Commission to amend the new rules to ensure that displaced stations, such as KENS-TV, are afforded comparable DTV service areas in the post-transition period, and will not be subject to the power and height limitations of new rule section 73.622(f).

<sup>9</sup> <u>Id.</u> at Appendix E (Rule 73.622(f)).

## C. <u>The Commission's Rules Should Ensure that a Displaced Station is Compensated Fully for Relocation Costs</u>

In a previous phase of this proceeding, <sup>10</sup> the Commission "recognize[d] that there are costs associated with moving stations to new channels[]" within the DTV core spectrum, and asked "whether the licensee that bumps the broadcaster should pay to move the broadcaster, as was done in the emerging technologies band for PCS." However, the Commission failed to address this issue beyond observing that requiring new licensees to compensate broadcasters for the cost of relocating to DTV channels in the core spectrum area "could ... be available to broadcasters at channels 52-59 and 2-6 at a later date." The Sixth Report and Order does not address this issue as it relates to broadcasters assigned DTV channels in the lower VHF channels or channels 52-59.

Given the uncertainty over whether and to what extent broadcasters will be compensated for relocation costs, KENS-TV and other similarly situated stations face the real possibility of bearing the entire costs of both the transition to DTV and the relocation to a second DTV channel at the end of the transition

Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, FCC 95-315, Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry (released August 9, 1995).

Id. ¶ 60.

Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, FCC 96-317, Sixth Further Notice of Proposed Rule Making, ¶ 26 (released August 14, 1996).

period. Such a result would be unfair, impose significant economic hardship, and severely complicate future business planning.

If the burden of relocating to a second DTV channel must be borne by an arbitrary number of unfortunate broadcasters, the costs of having to do so should not. If relocation is to be mandated by the Commission, Harte-Hanks requests that the Commission adopt rules ensuring that displaced stations will be fully compensated for all associated relocation costs.

#### III. CONCLUSION

For the foregoing reasons, Harte-Hanks urges the Commission to implement necessary corrections to its DTV Table regarding the reference coordinates of KENS-TV, and to adopt protections to ensure that KENS-TV and other similarly situated stations will be able to continue to provide replicated coverage to DTV audiences after the transition period ends, and will be fully compensated for all relocation expenses incurred as a result of having to move to a second DTV station within the core spectrum.

Respectfully submitted,

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June 13, 1997

IIO No. B. C.

### ALTERNATE MAIN TRANSMITTERS A TRANSMITTERS AND MAIN

Call Sign KENS

TELEVISION BROADCAST STATION LICENSE

ANTENNA Subject to the provisions of the Communications Act of 1934, subsequent acts, and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to conditions set forth in this license, 1/2 the LICENSEE

### "HARTE-HANKS TELEVISIVN, INC.

is hereby authorized to use and operate the radio transmitting apparatus hereinafter described for the purpose of broadcasting for the term beginning AUGUST 1, 1977 and ending AUGUST 1, 1980

(3 a.m., Local Time)

(3 a.m., Local Time)

The licensee shall use and operate said apparatus only in accordance with the following terms:

1. Station location: City SAN ANTVNIV State ZEXAS

FUUR MILES NURTH 79 DEGREES EAST 2. Transmitter location:

FRVM ELMENDVRF, TEXAS

Degrees 29 Seconda North Latitude: Minutes 16 10 West Longitude: Degrees 98 Minutes 15 Seconds 55

3. Main studio location: AVENUE E AND 4TH STREET

SAN ANTONIO, TEXAS

**ENGINEERING CUNSITION:** TRANSMITTER VUTPUT PVWER MEASURED AT VUTPUT TERMIN VF DIPLEXER.

Visual 4. Transmitter: Make and Type HARRIS BT-25L-1

HARRIS BT-25L-1 kw).

Rated power 14.4 dbk( 27.5 kw) peak. 7.783bk( b.0 5. Antenna: RCA 6-SECTIVN CUSTVN SUPERTURNSTILE, MUDIFIED FUR

Make and Type NULL FILL-IN Horizontal field pattern VMNIDIRECTIVNAL

Antenna supporting structure 1359.655 FVVT TVWER

Overall height above ground 1531 feet (including obstruction lighting)

2049 -feet (including obstruction lighting) AND 21 Overall height above mean sen level

Obstruction marking specifications in accordance with paragraphs 1,3,10.1, 19.1 of FCC Form 715 attack

6. Operating assignment:

76-82 Megahettz (Channel No. 5 Frequency

Carrier frequency Milz. MHz. 77.25 Effective radiated power 20.0 dek(100 kw) peak. 13.0 <sup>aak (</sup> 20.0 13.7 dbk( 23.4 kw) peak. Transmitter output power h. 7 dbk (

Antenna height above average terrain 1390

Hours of operation - Unlimited

The Commission reserves the right during said license period of terminating this license or making effective any changes or modifices tion of this license which may be necessary to comply with any decision of the Commission tendeted as a result of any hearing held under the rules of the Commission prior to the commencement of this ficense period or any decision rendered as a result of any such hearing which has been designated but not held, prior to the commencement of this license period.

This ficense is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve public interest, convenience, or secessity to the full extent of the privileges

herein conferred

This license shall not vest in the licensed any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, not in any other manner than authorized herein. Neither the license not the tight granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is aubject to the right of use or control by the Government of the United States conferred by section 600 of the Communications Act of 1934

1/ This license consists of this page and pages

APRIL 28, 1980

FEDERAL COMMUNICATIONS COMMISSION